



March 25, 2020

VIA ELECTRONIC CASE FILING

The Honorable Jocelyn G. Boyd
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

Attorneys at Law

Alabama
Florida
Georgia
Louisiana
Mississippi
South Carolina
Tennessee
Texas
Washington, DC

John J. Pringle, Jr.

Direct: 803.343.1270
E-Fax: 803.343.1238
jack.pringle@arlaw.com

RE: DOCKET NO. 1997-239-C - Proceeding to Establish Guidelines for an Intrastate Universal Service Fund (USF) (Pursuant C.F.R §54.420 FCC) and Lifeline Biennial Audit Reports (See Also 2009-326-C);

DOCKET NO. 2020-106-A - Actions in Response to COVID-19

Dear Jocelyn:

Please allow this letter to serve as Assurance Wireless of SC, LLC's ("Assurance Wireless") petition for reconsideration or clarification of Commission Order No. 2020-210 ("Order"), pursuant to S.C. Code Ann. Section 58-9-1200 and S.C. Code Ann. Regs. 103-854.

In particular, Assurance Wireless seeks reconsideration or clarification of the Order's requirement that Lifeline Eligible Telecommunications Carriers (ETCs) "suspend the requirement allowing Lifeline Eligible Telecommunications Carriers to drop customers for non-usage"¹

As described herein, the Order purports to suspend a federal requirement- the "de-enrollment for non-usage" requirement found in 47 CFR Section 54.405(e)(3). However, because the Federal Communications Commission ("FCC") has not waived application of that particular federal rule, it remains in full force nationwide.

Accordingly, complying with the Order would force Assurance Wireless to violate 47 C.F.R. Section 54.405(e)(3), putting Assurance Wireless "between a rock and a hard place." To the extent the Commission intended to adopt those waivers of federal rules ordered by the FCC, Assurance Wireless requests that the Commission clarify the Order to reflect those limited waivers granted by the FCC.

¹ Assurance Wireless is not seeking reconsideration of the Order's determination with respect to "failed re-certification" to the extent that the Order is limited to de-enrollment of Lifeline customers whose anniversary date falls between April 14, 2020 and August 14, 2020, and is limited to the same time frame as the FCC's waiver. As set forth herein, the application of 47 CFR Section 54.407(e)(4) has been waived by the Wireline Competition Bureau of the FCC for Lifeline subscribers falling within this window. To the extent that the Order prohibits the de-enrollment of Lifeline subscribers whose anniversary date falls outside the April 14 - August 14, 2020 timeframe, and who fail to re-certify, Assurance Wireless requests reconsideration and/or clarification of same.

Assurance Wireless is a Lifeline ETC, having been designated by this Commission as an ETC via Order No. 2011-276 in Docket No. 2010-91-C.

Applicable Law

The Federal Lifeline De-Enrollment Rules

47 C.F.R. Section 54.405, “Carrier obligation to offer Lifeline,” provides in pertinent part:²

(e) De-enrollment -

(3) De-enrollment for non-usage. Notwithstanding paragraph (e)(1) of this section, if a Lifeline subscriber fails to use, as “usage” is defined in § 54.407(c)(2), for 30 consecutive days a Lifeline service that does not require the eligible telecommunications carrier to assess and collect a monthly fee from its subscribers, an eligible telecommunications carrier must provide the subscriber 15 days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 15-day notice period will result in service termination for non-usage under this paragraph. Eligible telecommunications carriers shall report to the Commission annually the number of subscribers de-enrolled for non-usage under this paragraph. This de-enrollment information must be reported by month and must be submitted to the Commission at the time an eligible telecommunications carrier submits its annual certification report pursuant to § 54.416.

The FCC Wireline Competition Bureau Waiver Order

On March 17, 2020, the Wireline Competition Bureau (WCB) of the FCC issued DA 20-285 (WCB Waiver Order)³ waiving “the Lifeline’s program’s recertification and reverification requirements for 60 days.” WCB Waiver Order, ¶ 2. In particular, the WCB found “that good cause exists to waive for 60 days sections 54.405(e)(4) and 54.410(f) of the Commission’s rules, which require Lifeline subscribers to demonstrate continued eligibility for the program.” WCB Waiver Order, ¶6. The WCB Waiver Order **did not** waive application of 47 C.F.R. Section 54.405(e)(3) (“De-enrollment for non-usage”).

Analysis

Assurance Wireless, like all Lifeline ETCs, continues to be bound by the requirements of 47 C.F.R. Section 54.405(e)(3) unless and until the FCC or its WCB takes action to waive the application of same. South Carolina Commission Rules 103-690 (“Designation of Eligible Telecommunications Carriers”) and 103-690.1 (Annual Reporting Requirements for Designated Eligible Telecommunications Carriers) do not address de-enrollment for non-usage.

² A complete version of 47 CFR Section 54.405 is attached hereto.

³ *In the Matter of Lifeline and Link Up Reform and Modernization*, DA 20-285, WC Docket No. 11-42, issued March 17, 2020.

Respectfully, the Commission cannot waive application of a federal rule. 10 S.C. Code Ann. Regs. 103-803 gives this Commission specific authority with respect to “these rules and regulations” (those promulgated in Chapter 103) but not those promulgated pursuant to Federal law.

Assurance Wireless is Proactively Responding to COVID-19 Emergency

Regardless of the jurisdictional issue discussed above, Assurance Wireless is taking proactive steps to help lessen the impact that the current COVID-19 emergency is having on its Lifeline customers, both in South Carolina and nationwide. In response to the national Coronavirus emergency, Assurance Wireless is offering all its Lifeline customers extra service free of charge. All Assurance Wireless Lifeline customers will receive unlimited domestic calling, unlimited texting and an extra 6GB of data starting March 21 and continuing through May 20, with the result that customers in all states will receive the incremental benefit of both unlimited domestic calling and the extra 6GB of data.

Conclusion

Assurance Wireless requests that the Commission clarify or amend its Order to reflect only those limited waivers granted by the FCC in the WCB Waiver Order, and grant such other relief as is just and proper.

Sincerely,

s/ John J. Pringle, Jr.
John J. Pringle, Jr.

JJP

cc: William Atkinson, Esq. (via electronic mail service)
All parties of record (via electronic mail service)